

NORTH CAROLINA WORKERS' COMPENSATION
YOUR GUIDE TO A SUCCESSFUL WORKERS' COMPENSATION HEARING

2006 Revision Prepared and Presented by

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INTRODUCTION

This manuscript and presentation are designed to provide useful information to both the seasoned and beginning practitioners in the area of workers' compensation. Hence, you may already be familiar with some items, while others may be brand new. I will attempt to answer whatever questions you may have with respect to either.

The North Carolina Industrial Commission administers all workers' compensation cases and all tort claims filed against state agencies. I will not go into the tort claims division, but for your reference, see Chapter 143 of the North Carolina General Statutes to guide you in those claims.

Pertinent phone numbers and basic information pertaining to workers' compensation cases can be found in the most current **Bulletin for the North Carolina Industrial Commission**, located in the appendix of this manuscript (**Excerpts attached in Appendix A**). Please feel free to use the listed telephone numbers when needed, and also note that a wealth of information, including workers' compensation case law decisions, can be obtained by visiting our website at <http://www.comp.state.nc.us/>. Our webmaster, Robert McDowell, is always willing to assist with navigating the website, so contact him if needed. (919-807-2500)

I. GENERAL INFORMATION

Practice in the workers' compensation arena is a unique, forms-oriented process. Unlike other areas of the law, it is very specialized, and it has its own set of rules that attorneys are best served to follow. The very first place to start is Chapter 97 of the North Carolina General Statutes, which includes the workers' compensation statutes and applicable case law. I would strongly encourage practitioners to invest in the 1994 and the 1999-2000 and 2003 and 2005 Editions of North Carolina Workers' Compensation Law Annotated, published by the Michie Company and issued by the Industrial Commission. The publications are also available in CD-ROM format. It is a complete guide not only to Chapter 97, but the North Carolina Industrial Commission Rules and Chapter 143, which covers the tort claims division.

For current updates on changes to existing workers' compensation statutes, please visit the website for the North Carolina General Assembly at www.ncga.state.nc.us.

A. MAKE-UP OF THE INDUSTRIAL COMMISSION

1. Sections

You may need to utilize one or more of the sections of the Industrial Commission (hereafter, "Commission") in representing your clients, whether you represent claimants, defendant-employers, or insurance carriers. The **sections and phone numbers** are listed in the **Appendix A**. **Buck Lattimore**, serves as **Chairman** of the Commission, and **Stephen Gheen** serves as our **Chief Deputy Commissioner**. Chief Deputy Commissioner Gheen formerly served as an Assistant Attorney General in the handling of fraud cases at the Commission; he is very accessible and welcomes questions, so feel free to contact him.

2. Deputy Commissioners

Since this presentation deals with workers' compensation hearings, below is a list of the Deputy Commissioners with whom you may have hearings. All formal hearings are held before a Deputy Commissioner. Form 24 Hearings are conducted by Special Deputy Commissioners. Our current Deputy Commissioners are as follows:

Phillip A. Baddour, III, Morgan S. Chapman, John B. Deluca, Kim Ledford, J. Brad Donovan, James G. Gillen, George T. Glenn, II, Myra L. Griffin, George R. Hall, III, Robert J. Harris, Phillip A. Holmes, Bradley W. Houser, Adrian A. Phillips, Robert W. Rideout, Jr., Ronnie E. Rowell, Chrystal Redding Stanback, Theresa Bunce Stephenson, and Wanda Blanche Taylor

John C. Schafer, also a Deputy Commissioner, serves as the Commission's Mediation Coordinator.

The Deputy Commissioners are divided into teams who cover the East, Middle, and Western parts of the state, and a special team that hears specially set cases statewide. The teams rotate every four months or so into a different region. **Chief Deputy Commissioner Gheen** also holds hearings. The schedule of hearing trips for each Deputy Commissioner can be found on our website at www.comp.state.nc.us. Calendars for hearings are generally sent to the parties between four to six weeks prior to the dates scheduled for hearing; however, the cases to be set for hearing are published on our website prior to being placed on the calendar. (Please see "MASTER LIST OF CASES FOR DOCKETING" on the website). Therefore, please check the website periodically to determine if one of your cases is in line to be set for hearing. If the case is not ready for hearing, please contact Chief Deputy Commissioner Gheen to notify him of the same, and the case will be removed from our list without the need for further motions.

3. Workers' Compensation Educational Conference

If you are truly interested in learning more about the practice of workers' compensation, please plan to attend the *Eleventh Annual Workers' Compensation Educational Conference CLE* sponsored by the Industrial Commission. The next conference is scheduled for October 18 – 20, 2005 at the Sheraton Imperial in Research Triangle Park. The contact person for this event is Commissioner Dianne Sellars, and more information about the conference can be found on our website.

B. A FORMS-ORIENTED PRACTICE

Workers' compensation is a very forms-oriented practice. Forms are filed from the beginning of an injury through appeals to the Full Commission. A **list of commonly used forms** can be found in the **Appendix B**. The **Form 19, 21 and Form 26** have recently been amended, and there is also a new process in place for their approval. Please check the website for a copy of the Full Commission Minutes that detail the approval process for these forms.

If you are an attorney representing a claimant, the first form you want to ensure is filed with the Commission is a **Form 18**. It is the equivalent of a complaint in civil court -- it tolls the two-year statute for filing workers' compensation claims! Be sure to list all the injuries that the claimant contends are a result of the accident or occupational disease in question. Consider filing an *Amended Form 18* if additional allegedly compensable injuries or conditions arise at a later date, or if your client filed a Form 18 on his or her own.

If you are an attorney representing a defendant-employer and/or insurance company, be sure to have your client file a **Form 19 (revised August 2006)**, (the employer's report of injury), within five (5) days of knowledge of the injury. Also, be sure to read **N.C. Gen. Stat. §97-18**, which requires the defendants to either accept or deny a workers' compensation claim ***within 90 days of written or actual notice of the injury or death of an employee***. If the guidelines of this statute are not followed, there is a possibility that the defendants may be ordered to pay the claim based on their failure to admit or deny within the prescribed time frame.

C. MEDIATION

This manuscript will not attempt to give practice details on our mediation program at the Commission. However, based on feedback from attorneys, claimants, and insurance companies, this program is working well. The total number of cases referred to mediation during the 2005-2006 fiscal year was 9,159. This is the fifth straight fiscal year wherein cases referred to mediation exceeded 9000. In addition, the settlement rates were 69.9% at mediation conferences, and 76.2% when settlements of cases at or before mediation conferences are included. Those settlement rates are both slightly higher than the settlement rates for the 2004-05 fiscal year (69.5% and 76.1% respectively).

Current policy at the Commission automatically orders all cases into mediation in which a **Form 33** Request for Hearing has been filed. Therefore, please familiarize yourself with the

Rules for Mediated Settlement and Neutral Evaluation Conferences, which can be found in the North Carolina Workers' Compensation Law Annotated, or they can be obtained from the Commission. **John Schafer, Mediation Coordinator**, or any of his staff members can assist you with questions with respect to mediation rules and policies.

II. PRE-TRIAL CONSIDERATIONS – STEPS TO TAKE BEFORE THE WORKERS' COMPENSATION HEARING

A. THE CLIENT INTERVIEW

Since many of you are practicing attorneys, I will not attempt to hold a client interview class; however, as the Honorable Charles Becton told us in our Trial Practice classes at the University of North Carolina School of Law, “You should know your closing argument once you’ve completed your client interview.” Since we may not be as ingenious as former Judge Becton, I will provide some tidbits of advice in this area.

The first step in evaluating a potential client’s claim is knowing the law. It is impossible for you to make a decision as to whether this person has a claim or if you care to represent them if you don’t know the applicable law according to the facts presented to you. When I first came to the Commission, I worked with Commissioner Bernadine Ballance who told me to “start with section **97-2**”, at least for injury by accident claims. That particular statute and the case law following it gives a comprehensive and helpful view of what an injury by accident is (and isn’t), and several other definitions which will assist you in determining if a case has merit. For occupational disease cases, start with section **97-53** and the case law accompanying it.

While scheduling the interview, instruct the potential client to bring any medical records in his or her possession, and have them sign a HIPPA compliant release form for any others. The validity of workers’ comp claims often hinges upon what doctors have recorded in their notes, and what they ultimately say in depositions.

Make sure your client has given actual and written notice to his or her employer of the injury. This often presents itself as an issue at the hearing. I would also encourage the client to keep notes on doctor visits, complaints of pain or difficulty in performing his or her job and other normal activities, and also any contact he or she has with the employer or insurance company.

Keep in mind that however your client presents him or herself in your office is how they will present themselves at trial. Imagine yourself to be a Deputy Commissioner while talking with this person. ***Are they believable? Is their story consistent? Were there any witnesses to the injury? How credible are the witnesses? Will this person hold up under tough scrutiny under cross-examination?*** You can prepare this client to have all sorts of personal questions asked of him or her at a hearing, including past medical history, and if they are reluctant to divulge such information to you, they will do the same thing at a hearing.

You can also remind your client that rarely does one come across million dollar workers’ comp cases. For compensable cases, a claimant is entitled to payment of medical bills associated with a compensable injury (see **N.C. Gen. Stat. §97-25**); temporary total disability compensation

- 2/3 of his or her average weekly wage (calculated based on a **Form 22 Wage Chart**) for the weeks they are totally out of work due to the injury (see **N.C. Gen. Stat. §97-29**); temporary partial disability - 2/3 of the difference between the average weekly wage before the injury and the current average weekly wage if he or she now has a lower paying job (see **N.C. Gen. Stat. §97-30**); and/or payment for any permanent partial disability rating (see **N.C. Gen. Stat. §97-31**). A client can also expect to be guided by the defendants with respect to medical treatment if it is an accepted claim, and also to be required to participate in vocational rehabilitation or a work hardening program if he or she is physically able to do so.

If your client is incompetent or a minor, in a death case where minor children are the beneficiaries, an I.C. **Form 42** is required for **Application for Appointment of a Guardian ad Litem**. Also, in death cases, file an I.C. **Form 29, the Supplemental Report for Fatal Accidents**, which contains vital information needed for completion of the claim.

If you decide to represent the person you have interviewed, you should immediately notify the Commission with a letter of representation and a copy of the fee contract. The standard attorney's fee for workers' comp cases is twenty-five percent (25%), even though some fee contracts call for 33 1/3 percent. Occasionally, if a case reaches the Full Commission and Court of Appeals, an attorney may be granted a higher percentage of the sums due plaintiff. Along with the letter of representation, you may also want to make a **Rule 607 request**, wherein you request a copy of your client's Industrial Commission file.

In the event that your client discharges you or other circumstances dictate that you cease representation, submit a Motion to Withdraw to either the Executive Secretary's Office, or a Deputy Commissioner if the case is already scheduled for hearing. Any time you submit a motion, please include a proposed order to facilitate a prompt ruling. Don't forget to request attorney's fees in the case if the situation so merits. You may be asked to submit a statement of hours expended in the case, so be prepared.

B. DISCOVERY

It is never too early to begin obtaining background information on a case. At one time, when there was a backlog of cases, and there was a long waiting period to get on a hearing docket, deferring discovery may have been a good idea -- not the case today. ***Generally speaking, cases will be scheduled for hearing within sixty (60) days of a failed mediation. Therefore it is imperative that you begin conducting discovery in a timely fashion.*** Additionally, conducting discovery before the mediation conference provides for more successful mediation results. Also, DIRECT EXAMINATION AND CROSS EXAMINATION DURING THE HEARING IS NOT THE TIME TO CONDUCT DISCOVERY.

The Commission Rules provide an abundance of discovery tools for practitioners to use. (See Commission **Rules 605, 607, and 608**). These rules allow parties to serve up to thirty (30) written interrogatories, including subparts, without leave of the Commission, at any time after the filing of a **Form 18, 18b, Form 33 or approval of a Form 21**. Pursuant to **Rule 607**, a party may request, in writing, production of any and all medical, vocational and rehabilitation reports and employment records in the opposing party's possession. A request for production of documents pursuant to **Rule 607** is a continuing request. As such, please distribute all records requested in a timely manner, which does not mean right before the hearing!

Requests for production beyond the scope of **Rule 607** and other forms of discovery may not be used except upon motion and approval by the Industrial Commission. All discovery motions should be directed to the Deputy Commissioner before whom a hearing is scheduled, or to the Executive Secretary's Office if no hearing is scheduled. Please take note that pursuant to **Rule 605(5)** of the Industrial Commission, one must state in motions to compel discovery, that informal means of resolving the discovery dispute were attempted in good faith before the filing of a motion. **Rule 605(5)** also requires that the moving party state the opposing party's position or that reasonable attempts were made to contact the opposing party.

If you seek to gain access to Employment Security Records, the Employment Security Commission will not do so without an order from the Commission, so make those requests to the Deputy Commissioner before whom your case is pending.

C. SURVEILLANCE REPORTS AND VIDEOTAPE EVIDENCE

Insurance carriers and servicing agents frequently hire private investigators to conduct video surveillance of workers' compensation claimants. Plaintiff's counsel should always serve defendants with a request for production to obtain any video or report made by private investigators.

Surveillance materials are often used to show that a plaintiff is actually working when he or she says they are not, that a plaintiff is capable of greater levels of physical activity than what he or she claims, or to impeach plaintiff's credibility. Keep in mind that one 10-minute video does not show very much, and may not be weighed heavily. Multiple days for extended times is a more effective and more convincing way to show what activities a claimant is actually

engaging in.

Defendants often object to requests for production of their surveillance materials, alleging work product protection; however these objections are routinely overruled to avoid trial by ambush.

Keep in mind and advise your clients that pursuant to Article IX, Rules 901-903, the employee may be required to report earnings or at least certify that he or she is not receiving wages for the period during which they receive workers' compensation benefits. Employees may face criminal prosecution under the fraud statutes if competent evidence is presented to show that plaintiff made false statements in this regard. (See Industrial Commission Form 90).

D. RECORDED STATEMENTS

Commission **Rule 608** entitles an employee to a copy of any written or recorded statement taken by the employer or insurer to determine whether the claim will be accepted or denied. If it is not provided within a timely manner, it is subject to exclusion at the hearing, at the discretion of the Deputy Commissioner.

E. MOTIONS

Generally, we receive motions of the following varieties: *motions to continue* or *remove a case from the hearing docket* and *motions for extensions of time to complete the evidentiary record*; and discovery motions, such as *motions to compel*. One needs to check the pre-trial order that accompanies the hearing calendar to ensure that you meet all deadlines with respect to motions to continue or remove. Whenever you send in a motion, state the opposing party's position, and provide the Commission with a proposed order.

Please refer to Commission **Rule 609** which governs the filing of motions. Keep in mind that we usually allow ten (10) days for a response from the opposing party, if time permits. Otherwise, a motion, in the discretion of the Deputy Commissioner, may be ruled upon immediately, depending on the nature of the request. An order should be filed on your motion within seven (7) days of the time permitted for a response from the opposing party. Please remember to always include a proposed order with your motion, and state the opposing party's position in your motion.

1. Motions for Continuance – *Upon the filing of a Form 33 Request for Hearing, be certain that your case is substantially ready to proceed to hearing. Strict guidelines are in place that govern the granting of continuances, so do not assume that you will be granted a continuance, save compelling circumstances. This is the case even if both parties have agreed to a continuance.*

2. Motions for Removal - *Motions for removal of a case from the hearing docket are likewise governed by strict guidelines. A removal of a case will sometimes require the filing of a new Form 33 Request for Hearing, depending on the*

circumstances. The Orders granting removals should specify how the case is to be placed back on the hearing docket – with the filing of a new Form 33, or by making a written request to the Chief Deputy Commissioner. Currently, the Deputy Commissioners use a variety of different “removals” of cases, including cases that are actually deemed partially settled, temporarily removed, or removed to mediation. Please be very specific in your motions for removals as to the status of the case, as a Consent Order may be required by the parties, depending on the reason(s) for the removal request.

All motions for removal should still be directed to the Deputy Commissioner before whom the hearing is scheduled.

3. Motions for Extension of Time for Closing the Record – Generally speaking, for alleged injury by accidents, the parties are allowed sixty (60) days from the date of the hearing to complete medical depositions and/or lay testimony depositions. At the expiration of the initial sixty (60) day period, the parties are then generally allowed thirty (30) days within which to submit briefs and contentions and proposed Opinion and Awards. It is not unusual for the parties to experience delays in closing the evidentiary records, particularly in the scheduling of medical depositions. Therefore, the parties are strongly encouraged to obtain a schedule of depositions of all medical care providers to present at the time of the hearing. In the event that the parties still need additional time, the appropriate motion should be filed with the Deputy Commissioner before whom the case was heard, explaining in detail the need for an extension of time.

For alleged occupational disease claims, the parties are generally allowed ninety (90) days from the date of the hearing to complete medical and/or lay testimony depositions. At the expiration of the initial ninety (90) day period, the parties are then generally allowed thirty (30) days within which to submit briefs and contentions and proposed Opinion and Awards. In the event that the parties still need additional time, the appropriate motion should be filed with the Deputy Commissioner before whom the case was heard, explaining in detail the need for an extension of time. Submit Motions for Extension of Time prior to the expiration of the original time granted.

Please refrain from making piece-meal motions for extensions of time. For example, if “Dr. A” has cancelled a previously scheduled deposition, and the new date is beyond the time originally granted, and the parties have yet to hear back from “Dr. B” regarding his availability for deposition, secure both dates for deposition before requesting time for an extension, instead of making two or three motions over a period of time.

4. Motions to Compel; Requests for Sanctions - Motions to compel and requests for sanctions are time consuming to decide and generally foster ill-will among the attorneys in the case. Pursuant to **Rule 605(5)** of the Industrial Commission, one must state in motions to compel discovery, that informal means of resolving the discovery dispute were attempted in good faith before the filing of a motion. **Rule 605(5)** also requires that the moving party state the opposing party’s position or that reasonable attempts were made to contact the opposing

party.

5. Contempt Motions – Pursuant to N.C. Gen. Stat. Section 97-80 gives Commissioners and Deputy Commissioners judicial authority to hold persons in civil and criminal contempt. Practitioners have been filing motions for contempt based on the other party's non-compliance with orders of the Industrial Commission. At the present time, Chief Deputy Commissioner Stephen Gheen, and Deputy Commissioners Adrian Phillips, and George Hall are primarily handling the contempt motions at the Deputy Commissioner level. The general rule of thumb here is to (1) COMPLY WITH ORDERS OF THE COMMISSION or (2) FILE A MOTION FOR RECONSIDERATION AND TO STAY THE ORDER, pursuant to **Rule 703**.

F. FOREIGN LANGUAGE INTERPRETERS

Rule 616 of the Industrial Commission governs the use of foreign language interpreters. A person who does not speak or understand the English language is guaranteed assistance under this rule; however, notice is required to be given to the Industrial Commission and to the opposing party that the need for an interpreter exists. **Rule 616(3)** requires that such notice be given in writing, *not less than 21 days prior to the date of the hearing*, specifying the language to be interpreted. The employer or insurer is then required to retain the services of an interpreter who qualifies as an expert witness pursuant to N.C. Gen. Stat. §1C-1.

Rule 616(5) directs the employer or insurer to pay the interpreter's fees. The moving party may be assessed the costs of the interpreter only in cases where the claim for compensation was prosecuted without reasonable ground, or where it is ultimately determined that the request for an interpreter was unfounded.

G. PRE-TRIAL ORDER, NOTICE TO PARTIES, THE HEARING CALENDAR AND PRE-TRIAL AGREEMENT

Let's say you have filed a **Form 33 Request for Hearing**, the case has been through mediation and reached an impasse, and the case is now calendared for hearing before a Deputy Commissioner. And by the way, do not file a **Form 33** unless the case is substantially ready for hearing. At one time, the Commission had a tremendous backlog of cases waiting to be heard, but that is no longer the state of affairs. Many hearings are requested, which get placed on a hearing docket, only to be continued or removed because the case is not ripe for hearing.

1. Pre-Trial Order and Notice to Parties

One of the first items to review carefully once you receive a hearing calendar packet is the **Pre-Trial Order and Notice to Parties**. (**Appendix C**) The Deputy Commissioner Section has adopted a uniform Pre-Trial Order and Notice to Parties that contain imperative information with respect to filing deadlines and other specific instructions for the submission of evidence. Make every effort to comply with the deadlines set forth, for example, a **Pre-Trial Agreement** will be required in most cases

(See below and **Appendix D**), and the Pre-Trial Order will set forth the date by which it should be submitted to the Commission. If for some reason one cannot comply with the deadline, please contact the Deputy Commissioner and/or his or her assistant and ask for an extension, otherwise, you may be subject to sanctions, including the removal of the case from the hearing docket.

2. Hearing Calendar (Appendix E)

Most hearing calendars are faxed to the parties from the Commission. Please complete the ***Fax Acknowledgment Form*** and fax it back to the person sending it. This form is our indication that service has been perfected. Pay close attention to the parties noted for your case on the calendar, because whoever is listed on the calendar as a party will receive notice of the hearing. If you have a contention that a different insurance company is on the risk, or if more than one insurance company may be liable, be sure to file a motion to add that company if it does not appear on the calendar.

Also, note the date, time and *place* set for your hearing. Due to lack of available courtroom space, occasionally the Deputy Commissioners have to use different courtrooms, etc., even during the same hearing week. Also, generally speaking, cases from various counties are assigned to a Deputy Commissioner to hear, and those cases may be grouped together in one or more counties for hearing purposes. Therefore, even if your case originated in Granville County, it may be grouped together with other cases for hearing in Vance County. If a hearing site presents a problem for your client, please notify the Deputy Commissioner immediately.

3. Pre-Trial Agreement/Deposition Schedule (Appendix D)

Preparing a pre-trial agreement is a way to efficiently organize your case for hearing. It should list the parties' stipulations, witnesses, a list of exhibits, and the issues for determination by the Court. (See the Forms sections of the General Rules of Practice for the Superior and District Courts for a guide to drafting Pre-Trial Agreements). It also provides an opportunity to discuss the case with opposing counsel, which could lead to settlement of some issues or even settlement of the case. If the opposing party is not represented by counsel, you can still prepare your portion of a pre-trial agreement and submit it to the Deputy Commissioner. Whatever you do, **PLEASE TALK TO THE OPPOSING COUNSEL OR OPPOSING PARTY BEFORE THE HEARING**. Don't walk into a hearing cold -- it is not good legal practice, it will be evident, and it can be irritating to the Deputy Commissioner hearing your case.

A deposition schedule will be required for submission in all cases in which the parties plan to take expert testimony. One would be best served to begin scheduling the depositions as soon as you determine that a particular medical care provider's testimony is needed.

H. HEARING PREPARATION

If there is one single piece of advice I can offer practitioners, it is to **BE PREPARED!!!** You just can't imagine how embarrassing and time-consuming it is for the Deputy Commissioner and the clients to be subjected to the whims of an unprepared attorney. After discussing this manuscript with other Deputy Commissioners, the number one complaint among them is that some attorneys are not prepared.

In order to prepare, ensure that (1) all Commission forms have been filed, (2) all of your witnesses have been interviewed (if appropriate) and the necessary subpoenas have been issued or witnesses have been otherwise notified of the hearing, (3) all exhibits have been copied for the opposing party and the Court -- *exhibits, particularly medical records, should be paginated and divided by medical care provider*, and (4) questions are prepared in advance for your witnesses and for the cross-examination of the opposing parties' witnesses.

Be cognizant of the fact that the Deputy Commissioner will not try your case for you! It is incumbent upon you to ask the pertinent questions to prove your claim or defense. This includes proper questioning of medical care providers in depositions - ask the questions that can lead to proving your claim for injury by accident or occupational disease, because if the evidence does not exist, the claim will be denied.

I. AT THE HEARING

BE ON TIME!!! Be on time means be early. A workers' compensation hearing is like any other trial, and requires the same type of preparation and respect for the Court. Know where the hearing is being held, and arrange to meet your client and witnesses at least one-half hour prior to the scheduled hearing. This ensures their presence and also allows time to take care of any preliminary matters before the testimony begins. You may notice on the hearing calendar that several cases may be set for the same time slot. Be prepared to go forward at the time indicated, as cases before yours may settle or otherwise come off the docket.

Prior to going on the record, the Deputy Commissioner will more than likely discuss the issues for determination and any pre-trial motions the parties may have filed. Now is the time to clarify and/or tailor the issues for trial, and to bring to the attention of the Deputy Commissioner any outstanding issues or housekeeping matters.

Organize your exhibits and have them marked or know how they will be marked. For occupational disease cases, have a stipulated job description and or job videotape available. Have medical records and personnel files, and all other stipulated documents arranged in a package, paginated and divided by content.

When presenting your exhibits, please identify the document on the record in terms of how you have previously marked it (i.e., "Plaintiff's Exhibit Number One") or have the trial assistant mark it for identification purposes. **Before presenting the exhibit to a witness**, ask the Deputy Commissioner if you may approach the witness, and recite on the record how the exhibit is marked. Have the witness identify the document.

If you refer to exhibits that have already been marked (stipulated exhibits, for

example), identify the exhibit on the record according to how it is marked. For example, when you approach a witness with a document, say something along the lines of, “I’m showing you what has been previously marked as Stipulated Exhibit Number One, page 37.”

Conserve time and ask pertinent legal questions. Do not be redundant and long-winded. Be precise and succinct. Present relevant background questions to your client, not his or her entire life history. Have the client describe the injury or onset of disease symptoms, being as specific and detailed as possible, including dates and times and any witnesses present. A cross-examination is not a repeat of the direct examination! If you notice the Deputy sighing, no longer taking notes, or if you have been asked to move on, please do so.

Courtroom demeanor and conduct are just as important as the presentation of your case. Please don’t argue with the Deputy Commissioner on evidentiary rulings -- make a note for appeals purposes or ask to make an offer of proof. Do not belittle or badger opposing witnesses or opposing counsel for that matter. It is incredibly tiring and distracting to have to referee fights between attorneys or between attorneys and witnesses. Also, don’t allow your client to badger opposing counsel. Finally, counsel should address each other *through the Deputy Commissioner and not directly to one another*.

In essence be *prepared, precise, polite and punctual*.

1. Some pertinent evidentiary information involving injuries by accident

Read N.C. Gen. Stat. §97-2

- Get the injury by accident established, according to the elements required
- Elicit date, time, exactly what happened, any witnesses, notice to the employer, and immediate pain sensations the client experienced
- Present a brief medical treatment history, including prior medical history if this is at issue, the first doctor’s visit, the diagnosis(es), medications prescribed, treatment rendered; if the medical records have been stipulated into evidence, ***please*** don’t go through each doctor visit one-by-one – give an overall view of the medical treatment
- Establish time out of work due to the injury and whether it was under doctor’s orders; please be specific with dates
- Deal with the physical pain symptoms experienced by the client from the injury date forward to the present, any limitations experienced, and any psychological and financial repercussions resulting from the accident
- If your client has been released to return to work, show that they have in fact looked for work! Keep a job search history
- If your client has returned to work, either for the defendant-employer or some other employer, establish the date(s) of return, the job assigned, whether the client could perform the job and at what wage they were paid
- Highlight any permanent partial disability rating(s) and whether a doctor has said the client has reached maximum medical improvement, when they did, and if they will require additional medical treatment in the future

2. Some pertinent evidentiary information to present in occupational disease claims

Read N.C. Gen. Stat. §97-53

- Establish elements of the occupational disease as required by the statute and applicable case law
- Establish the onset of symptoms, when client first noticed a problem
- When did the condition become disabling, such that the client was no longer able to work?
- Give detailed description of job duties at the onset of the disease symptoms and if any unusual circumstances prevailed - such as a heavier than normal work load or a change in positions
- Present brief medical history as noted above
- Establish dates client was out of work due to the disease
- **At the medical deposition, do not forget to ask the doctor's opinion as to whether to a "reasonable degree of medical certainty, did this job cause the disease or was it a significant causal factor in the onset of the disease; whether this disease is characteristic of and peculiar to this particular employment; whether the client was at an increased risk of contracting this disease; whether this disease is not one in which the public is generally exposed."** The "characteristics of and peculiar to and increased risk" question is absolutely necessary for occupational diseases which are not listed in the statute, but which fall under §97-53(13) - the "catch all" phrase - this applies to claims such as carpal tunnel syndrome
- Present evidence on any permanent partial disability ratings

III. AFTER THE HEARING

Following the hearing, proceed with medical and lay testimony depositions, any post-hearing motions and prepare the briefs and contentions and proposed Opinion and Awards. Medical depositions are generally taken at the defendants' expense, however, a plaintiff may bear the burden of deposing any of his or her lay witnesses who could not be available for hearing. Motions to depose lay witnesses after the hearing should be submitted to the Deputy Commissioner *prior* to the hearing.

In your briefs and contentions, present a statement of facts, particularly the ones you wish the Deputy Commissioner to find, recitation of the issues and your factual and legal arguments in support of your claim or defense. The brief portion should include any applicable statutes and/or case law you wish the Deputy Commissioner to consider, and the entire document should be "brief".

Some Deputy Commissioners request proposed Opinion and Awards in the cases before them. Some may request that the proposed Opinion be forwarded as an attachment to e-mail or on a diskette. All the e-mail addresses for the Deputy Commissioners can be found on the Industrial Commission website at www.comp.state.nc.us. A sample **Opinion and Award** can be found in the **Appendix F**.

IV. APPEALS TO THE FULL COMMISSION

You received the Opinion and Award filed by the Deputy Commissioner and you are not pleased with the results. **N.C. Gen. Stat. §97-85** allows an aggrieved party to a dispute to appeal to the Full Commission within **15 days** after receipt of an Order or Opinion and Award. The procedure to follow in appealing a case to the Full Commission is set forth in **Industrial Commission Rule 701**.

After a Full Commission hearing, if you are still not satisfied with the results, appeals to the North Carolina Court of Appeals and the North Carolina Supreme Court may be available.

V. BRIEF NOTE ON FRAUD

N.C. Gen. Stat. §97-88.2 bestows statutory authority on the Industrial Commission to investigate workers' compensation fraud. This statute includes investigations of employees, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers. Persons who are convicted of fraud are guilty of a Class 1 Misdemeanor if the amount at issue is less than \$1,000, and a Class H Felony for amounts involving \$1,000 or more. Currently, all non-insured defendant-employer cases are referred to our Fraud Division for investigation.

Samuel M. Constance and Joe Lynch are our current lead investigators of the fraud unit and may be contacted for questions concerning allegedly fraudulent conduct. You may also contact **Deputy Commissioner George Hall**, who handles the bulk of non-insured employer cases at the Deputy Commissioner level.

GOOD LUCK!!!!

APPENDIX A

BULLETIN

North Carolina Industrial Commission

Administering the [Workers' Compensation Act](#)

STREET ADDRESS

Dobbs Building · 430 North Salisbury Street
Raleigh, North Carolina 27603-5937

MAILING ADDRESS

4340 Mail Service Center
Raleigh, North Carolina 27699-4340

Internet Address: <http://www.comp.state.nc.us/>

APRIL 1, 2006

Information About
The North Carolina
[Workers' Compensation Act](#)

North Carolina Industrial Commission
[Michael F. Easley](#), Governor
[Buck Lattimore](#), Chairman

[Bernadine S. Ballance](#), Commissioner

[Christopher Scott](#), Commissioner

[Thomas J. Bolch](#), Commissioner

[Dianne C. Sellers](#), Commissioner

[Laura K. Mavretic](#), Commissioner

[Pamela T. Young](#), Commissioner

[Barbara Levine](#), Administrator

[Tracey Weaver](#), Executive Secretary

Ombudsmen: (800) 688-8349, (919) 807-2501
Fax: (919) 715-0282

Claims Section:

(919) 807-2502

Mediation Section:

(888) 242-5757,
(919) 807-2586

Commissioners:

(919) 807-2500

Medical Billing Section:

(919) 807-2503

Computer Support:

(919) 807-2591

Occupational Disease Section:

(919) 807-2502

<u>Deputy Commissioners:</u>	(919) 807-2500	<u>Ombudsman Section:</u>	(800) 688-8349, (919) 807-2501
<u>Docket Section:</u>	(919) 807-2504	<u>Safety Section:</u>	(919) 807-2603
<u>Executive Secretary:</u>	(919) 807-2575	<u>Statistics Section:</u>	(919) 807-2506
<u>Fraud Investigations:</u>	(888) 891-4895, (919) 807-2570	<u>Workers' Compensation Nurses:</u>	(919) 807-2616

FOR ANSWERS TO QUESTIONS...

About:	Telephone:
General questions and disputes in cases; statistics; coverage information	<u>Ombudsmen:</u> (800) 688-8349, (919) 807-2501, (919) 807-2506
Filing and case status	<u>Docket Section:</u> (919) 807-2504
Application of the Act , Settlement Agreements, and change of physicians	<u>Executive Secretary:</u> (919) 807-2575
Appeals, Rules, and Policies	<u>Commissioners:</u> (919) 807-2500
Medical Bill Approvals	<u>Medical Billing Section:</u> (919) 807-2503
Medical Fee Schedule	http://www.comp.state.nc.us/ncic/pages/feesched.asp , (919) 807-2503
Rehabilitation Assistance	<u>Workers' Compensation Nurses:</u> (919) 807-2616
Workplace Safety Programs	<u>Safety Section:</u> (919) 807-2603
Hearings in Contested Cases	<u>Docket Section:</u> (919) 807-2504
Pending Occupational Disease Claims	<u>Occupational Disease Section:</u> (919) 807-2502
Publications and Forms	Accounts Receivable: (919) 807-2527
Form Agreements, Attorney Fees	<u>Claims Section:</u> (919) 807-2502
Personnel and Contracts	Chairman's Office: (919) 807-2526
Workers' Compensation Fraud	<u>Fraud Section:</u> (888) 891-4895, (919) 807-2570
Mediation of Claims	<u>Mediation Section:</u> (888) 242-5757, (919) 807-2586

APPENDIX B

OFFICIAL FORMS.

- (1) The Industrial Commission will supply, on request, forms identified by number and title as follows:

Form 17	Workers' Compensation Notice
Form 18	Notice of Accident to Employer and Claim of Employee of His Personal Representative or Dependents (N.C. Gen. Stat. § 97-22 through 24)
Form 18B	Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits for Lung Damage, Including Asbestosis, Silicosis, and Byssinosis (N.C. Gen. Stat. § 97-53)
Form 18M	Employee's Claim for Additional Medical Compensation
Form 19	Employer's Report of Employee's Injury to the Industrial Commission
Form 21	Agreement for Compensation for Disability Pursuant to N.C. Gen Stat. § 97-82
Form 22	Statement of Days worked and Earnings of Injured Employee (Wage Chart)
Form 24	Application to Terminate or Suspend Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-18.1
Form 25A	Certification of Complete Medical Reports (G.S. §97-82)—to be filed with Form 21 or Form 26 for approval of a permanent partial disability rating
Form 25C	Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment
Form 25D	Dentists' Itemized Statement of Charges for Treatment and Certification of Treatment of Disability
Form 25M	Physician's Itemized Statement of Charges for Treatment and Certification of Treatment
Form 25N	Notice to the Industrial Commission of Assignment of Rehabilitation Professional
Form 25R	Evaluation for Permanent Impairment

Form 25T	Itemized Statement of Charges for Travel
Form 25P	Itemized Statement of Charges for Drugs
Form UB-92	Hospital Bill
Form 26	Supplemental Agreement as to Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-82
Form 26D	Agreement for Compensation Under N.C. Gen. Stat. § 97-37
Form 28	Return to Work Report
Form 28B	Report to Employer of Carrier /Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation
Form 28T	Notice of Termination of Compensation by Reason of Trial Return to Work Pursuant to N.C. Gen. Stat. §97-18.1(b) and N.C. Gen. Stat. § 97-32.1
Form 28U	Employee's Request that Compensation be Reinstated After Unsuccessful Trial Return to Work Pursuant to N.C. Gen. Stat. § 97-32.1
Form 29	Supplementary Report for Fatal Accidents
Form 30	Agreement for Compensation for Death
Form 30D	Notice of Death Award (Approval of Agreement)
Form 31	Application for Lump Sum Award
Form 33	Request that Claim be Assigned for Hearing
Form 33R	Response to Request that Claim be Assigned for Hearing
Form 36	Subpoena for Witness and Subpoena to Produce Items or Documents
Form 42	Application for Appointment of Guardian <i>Ad Litem</i>
Form 44	Application for Review
Form 50	Itemized Statement of Charge for Nursing
Form 51	Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases

Form 60	Employer's Admission of Employee's Right to Compensation Pursuant to N.C. Gen. Stat. §97-18(b)
Form 61	Denial of Workers' Compensation Claim Pursuant to N.C. Gen. Stat. § 97-18 © and (d)
Form 62	Notice of Reinstatement of Compensation of Pursuant to N.C. Gen. Stat. § 97-32.1 and N.C. Gen. Stat. § 97-18(b)
Form 63	Notice to Employee of Payment of Compensation Without Prejudice to Later Deny the Claim Pursuant to N.C Gen. Stat. § 97-18(d)
Form 90	Report of Earnings
Form IZ-510	Medical Bill Analysis Used for Approval and Reduction of Medical Bills
Form MCS2	Petition for Order Referring Case to Mediated Settlement Conference
Form MCS4	Designation of Mediator
Form MCS5	Report of Mediator
Form MCS6	Mediator's Declaration of Interest and Qualifications
Form MCS7	Report of Evaluator

APPENDIX C
NORTH CAROLINA INDUSTRIAL COMMISSION

PRE-TRIAL
O R D E R

FILED:

For all cases set for hearing except those involving an unrepresented claimant

IT IS HEREBY ORDERED

1. The parties shall confer to determine all matters which can be stipulated, to designate the only issue(s) for trial, to indicate those who will be called to testify, to exchange relevant documents, to determine the estimated length of the hearing, and then prepare a PRE-TRIAL AGREEMENT. If liability has been denied, the AGREEMENT should include the standard stipulations (subject to the Act, employment relationship, insurance coverage, average weekly wage, date of injury, and the period plaintiff was out of work) together with a stipulation regarding what medical reports may be received into evidence. If liability has been previously determined, the AGREEMENT should include a stipulation regarding what compensation has been paid to plaintiff and what medical reports may be received into evidence. In cases where the injury is alleged to be due to **repetitive motion or cumulative trauma**, the parties shall confer to stipulate a written job description or videotape of the job at issue.

2. Before the hearing, all discovery shall be completed and the parties shall deliver all applicable medical records, documents and videotapes to each other, as provided by Industrial Commission rules. In addition, defendants shall provide plaintiff with a Form 22 if the parties have not reached a stipulation regarding average weekly wage.

3. All stipulated exhibits, including medical records, should be identified, paginated and bound together and shall be submitted at the hearing. Every party shall have a copy of the stipulated exhibits.

4. Medical depositions should be scheduled prior to the hearing and the deposition schedule shall be stated in the AGREEMENT. In accordance with the Chairman's directives, **the parties shall be expected to complete the record within 60 days of the hearing, or within 90 days for complex occupational disease claims**. All deposition transcripts, contentions and proposed opinions must be submitted within that period.

IT IS FURTHER ORDERED that the parties shall submit the original AGREEMENT to the assigned Deputy Commissioner **by the Monday preceding the week of hearings**. If one party or its attorney will not cooperate, then the other party or its attorney should submit as much information as possible and note that the opposing party or attorney would not participate. It shall be the responsibility of the party requesting the hearing to initiate preparation of the Agreement and to forward it to opposing counsel or party. Extensions shall be granted only for requests made prior to the due date.

Failure of either party to timely comply with this Order may result in the imposition of appropriate sanctions, including assessment of reasonable attorney fees against the party who fails to timely comply with this Order in favor of the party who timely complies.

S/

CHRYSTAL REDDING STANBACK
DEPUTY COMMISSIONER

NOTICE TO PARTIES
NORTH CAROLINA INDUSTRIAL COMMISSION
4338 Mail Service Center, Raleigh, North Carolina 27699-4338

CHRYSTAL REDDING STANBACK, DEPUTY COMMISSIONER
Yolanda Newsome, Legal Assistant
(919) 807-2555

I. WHEN CASE WILL BE HEARD

Cases will be heard in the order stated. Even if other cases are scheduled at the same time as your case, you should be ready to proceed at the scheduled time. If your hearing is expected to take more than four hours, please notify the Deputy Commissioner in order that the matter may be specially set so it will not disrupt the remainder of the scheduled cases. Be prepared to state whether any special circumstances should be taken into account. Any necessary changes in the order or scheduling of cases may then be made.

II. UNREPRESENTED PARTIES

Persons not represented by an attorney are advised to read the attached notice for more specific information concerning preparation for hearing. As workers' compensation cases involve medical and legal issues, it is strongly recommended that unrepresented parties consider retaining an attorney to represent their interests at hearing. For an attorney in your area, you may consult your local telephone directory, or the North Carolina Bar Association Law Referral Service at (919) 677-8574.

III. PRE-TRIAL STIPULATIONS

A Pre-Trial Agreement shall be required in all cases except those involving unrepresented plaintiffs. Stipulated medical evidence and other documentary evidence shall be paginated. The parties shall be prepared to submit an I.C. Form 22 Wage Chart, W-2 Form, or other evidence necessary to establish the plaintiff's average weekly wage.

IV. MOTIONS

Please review the docket as soon as you receive it. All Motions to Continue, Dismiss, or Remove, including those due to settlement, shall be directed to the Deputy Commissioner before whom the case is set and shall be made in written form, in compliance with the provisions of the Pre-Trial Order. The moving party shall prepare an order for the Deputy Commissioner with the appropriate case caption. Motions for continuance will be granted only for compelling reasons and only if the case cannot be rescheduled on the docket. Parties submitting motions by facsimile shall call to confirm receipt of the motion by the Deputy Commissioner. For further direction, refer to Rule 609 of the North Carolina Workers' Compensation Rules of the Industrial Commission.

V. SETTLEMENTS

The parties shall inform the Deputy Commissioner in a timely manner of any settlement. It is the responsibility of counsel to notify the Deputy Commissioner of settlement of the case prior to the scheduled hearing. Sanctions may be imposed against the parties for the failure to do so. The settlement agreement shall be submitted to the Deputy Commissioner within 30 days of the date of hearing. When the parties resolve issues under circumstances where a settlement

agreement would not be required, the parties shall submit a written memorandum stating the nature of the agreement.

VI. EXPERT WITNESSES

A. The parties shall obtain relevant medical or other experts' reports and, where possible, stipulate them into evidence.

B. Except in unusual circumstances, and with prior approval of the Deputy Commissioner, no testimony will be taken at the hearing from expert witnesses, including physicians. This testimony may be taken by deposition. The Deputy Commissioner shall be notified at least 20 days in advance of the hearing of the name of an expert witness a party would like to call at the hearing and the expected length of his or her testimony. If permission is granted to take the expert's testimony at the hearing, the subpoena for the witness should specify that the witness await telephone instructions regarding the exact time of his or her appearance. Physicians who do not practice in the county in which the hearing is set must be deposed. However, where the plaintiff is unrepresented by legal counsel, medical testimony will be allowed for local physicians. Otherwise, the matter will be reset for hearing in the county in which the physician practices or the testimony shall be elicited by depositions upon written questions to the physician.

C. The parties shall make every effort to schedule post-hearing depositions upon receipt of the hearing docket, in order to assure prompt closing of the record. Deposition dates shall be stated in the Pre-Trial Agreement but may be supplemented at the hearing. In accordance with the Chairman's directives, the parties shall be expected to complete the record within 60 days of the date of hearing, except in the case of complex occupational disease claims, in which case they shall be allowed 90 days. All deposition transcripts, exhibits, contentions and proposed Opinion and Awards must be submitted within that time.

D. The parties may depose an expert witness by agreement prior to the hearing without prior approval of the Deputy Commissioner. Depositions taken before the hearing shall be noted in the Pre-Trial Agreement submitted by the parties.

VII. MEDIATED SETTLEMENT CONFERENCES

Pursuant to Rule 3 of the Rules for Mediated Settlement Conferences, an order for Mediated Settlement Conference shall not delay the scheduling of a claim on the hearing docket, unless the parties have advised the Commission of their intention that the mediation be completed before a hearing is set. Parties are expected to request an extension of time to mediate a case before the original time limit has expired. Consequently, there should be no cases set on the hearing docket which have not been mediated. Sanctions may be imposed upon parties who have not requested an extension of time for mediation on a timely basis and who request that a case be removed from the hearing docket so that they can mediate the case.

08/24/00

APPENDIX D

NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. NO. 392504, ANGELA H. JONES, Employee, Plaintiff v. SUN MEDICAL SUPPLY/ROTECH HEALTHCARE, Employer, ACE USA, Carrier Defendants.

PRE-TRIAL AGREEMENT

Pursuant to the provisions of Rule 16 of the Rules of Civil Procedure and Rule 7 of the General Rules of Practice, a final pretrial conference was held in the above-titled case on the date last appearing herein. W. Bain Jones, Jr. appeared as counsel for plaintiff, and Jessica C. Smythe as counsel for ACE USA. The estimated length of the hearing is 2 to 4 hours,

STIPULATIONS

1. All parties are properly before the Commission, and this is the Court of proper jurisdiction for this action.
2. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.
3. The parties were subject to, and bound by, the provisions of the North Carolina Workers' Compensation Act.
4. At all relevant times, an employment relationship existed between the parties.
5. ACE USA Insurance Company was the compensation carrier on the risk at the time of plaintiff's compensable injury.
6. All Plaintiff's medical records will be submitted as a Stipulated Exhibit. The parties may supplement the medical records offered at the hearing with additional records previously requested and not yet received, or otherwise obtained during this hearing and the depositions to follow.
7. All Industrial Commission forms and filings will be submitted as a Stipulated Exhibit.
8. The average weekly wage will be determined from a Form 22 to be submitted by defendants.
9. Plaintiff's alleged date of injury is October 8, 2003.
10. In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts: None.

11. The following is a list of all known exhibits plaintiff may offer at trial;

See Exhibit "A" attached hereto and incorporated herein by reference.

12. It is stipulated that opposing parties have been furnished copies of the exhibits identified by plaintiff or have had an opportunity in view the same prior to trial.

13. The following is a list of all known exhibits defendants may offer at trial;

See Exhibit "B" attached hereto and incorporated herein by reference.

14. It is stipulated and agreed that opposing parties have been furnished copies of the exhibits identified by defendants or have had an opportunity to view the same prior to trial.

15. The following is a list of the names and addresses of all known witnesses plaintiff may offer at trial;

See Exhibit "C" attached hereto and incorporated herein by reference.

16. The following is a list of the names and addresses of all known witnesses defendants may offer at trial:

See Exhibit "D" attached hereto and incorporated herein by reference.

17. The following is a list of plaintiff's contestant issues:

See Exhibit "E" attached hereto and incorporated herein by reference.

18. The following is a list of defendants' contested issues:

See Exhibit "F" attached hereto and incorporated herein by reference.

19. Consideration has been given to a separation of triable issues, and counsel are of the opinion that separation of the issues would not be feasible.

20. Counsel for the parties represent to the Commission that, in advance of the preparation of this Order, there were full and frank discussions of settlement possibilities. Counsel for plaintiff will notify the Commission in the event of a material change in settlement prospects.

21. The depositions of the following treating physicians are being scheduled:

- a) Dr. Eugene Day
- b) Dr. Patrick Logue
- c) Dr. Mitchell Freedman
- d) Dr. Veerapan Sundar

- e) Dr. Sheldon Chase
- f) Dr. Richard K. Hutchins

APPENDIX E

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

NORTH CAROLINA INDUSTRIAL COMMISSION HEARING DOCKET

DEPUTY COMMISSIONER: CHRYSTAL REDDING STANBACK
COURT REPORTER: GRAHAM ERLACHER

MONDAY, AUGUST 28, 2006
GUILFORD COUNTY COURTHOUSE
201 SOUTH EUGENE STREET
3rd FLOOR COURTROOM 3D
GREENSBORO, NORTH CAROLINA

I. C. FILE NUMBER

212967 10:30am **	Robert W. Johnson (<i>Expedited Admin Appeal</i>) v. Indicor Inc. Key Risk Management Services	PLF: Robert A. Lauver Kernersville, NC DFT: Young Moore & Henderson Raleigh, NC
438336 10:30am **	Ronnie Sullivan (<i>Expedited Hearing</i>) v. RMC Carolina Materials Constitution State Service Company	PLF: Bretzmann & Aldridge High Point, NC DFT: Mullen Holland & Cooper Gastonia, NC
461030 11:30am **	Crystal Hodges (<i>Expedited Hearing</i>) v. Burlington Coat Factory GAB Robbins Insurance	PLF: Gray Johnson Blackmon Lee & Lawson Greensboro, NC DFT: Hedrick Eatman Gardner & Kincheloe Charlotte, NC
862638 11:30am **	Sherry L. Bolen (<i>Contempt Hearing</i>) v. D C H Construction Inc./D C H Global Line Builders Mutual Insurance Company	PLF: Hill & Hovis High Point, NC DFT: Lewis & Roberts Raleigh, NC
357610 12:30pm **	Kenneth Hubbard v. Precision Franchising Inc. Universal Underwriters Group	PLF: James M. Snow High Point, NC DFT: Cranfill Sumner & Hartzog Raleigh, NC
393942 12:30pm **	Kathy L. Murray v. Lorillard Tobacco Inc. Liberty Mutual Insurance Company	PLF: Kenneth M. Johnson Greensboro, NC DFT: Davis & Hamrick Winston-Salem, NC

PLEASE REFER TO "SECTION VI-EXPERT WITNESSES" OF THE "NOTICE TO ALL PARTIES" INSTRUCTIONS REGARDING THE TESTIMONY OF EXPERT WITNESSES.

NOTICE TO ATTORNEYS: A COPY OF THIS CALENDAR IS NOT BEING SENT TO REPRESENTED PARTIES. IT IS YOUR RESPONSIBILITY TO NOTIFY YOUR CLIENT.

**PRE-TRIAL ORDER REQUIRED.

***THE NOTICES ABOVE APPLY TO ALL CASES SCHEDULED THROUGHOUT THE DESIGNATED WEEK.

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

**NORTH CAROLINA INDUSTRIAL COMMISSION
HEARING DOCKET**

**DEPUTY COMMISSIONER: CHRYSTAL REDDING STANBACK
COURT REPORTER: GRAHAM ERLACHER**

**TUESDAY, AUGUST 29, 2006
GUILFORD COUNTY COURTHOUSE
201 SOUTH EUGENE STREET
3rd FLOOR COURTROOM 3D
GREENSBORO, NORTH CAROLINA**

I. C. FILE NUMBER

433640 10:30am **	Dahr Ahmed v. Guardsmark Security Key Risk Management Services	PLF: Kenneth M. Johnson Greensboro, NC DFT: Cranfill Sumner & Hartzog Raleigh, NC
434227/ 458627 10:30am **	Grady Keith Bowman v. Greensboro Auto Auction Zenith Insurance Company	PLF: Schlosser & Pritchett Greensboro, NC DFT: McAngus Goudelock & Courie Charlotte, NC
446848 11:30am **	Dwayne Tuggle v. Sign Service & Installation Inc. Liberty Mutual Insurance Company	PLF: Robert A. Lauver Kernersville, NC DFT: Hedrick Eatman Gardner & Kincheloe Charlotte, NC
183087 11:30am **	Robert W. McMillan v. Hirschfield Steel Company Inc. Argonaut Insurance Company	PLF: Crumley & Associates Highpoint, NC DFT: McAngus Goudelock & Courie Charlotte, NC
363296 12:30pm **	Armeninual J. Thomas v. United Parcel Service Inc. Liberty Mutual Insurance Company	PLF: Patterson Harkavy Chapel Hill, NC DFT: Hedrick Eatman Gardner & Kincheloe Charlotte, NC
495918 12:30pm **	Daniel E. Jones v. Estes Express Lines Gallagher Bassett Services	PLF: John Iorio Greensboro, NC DFT: Hedrick Eatman Gardner & Kincheloe Charlotte, NC

498505	Terry Plott	PLF:	Egerton & Associates
1:30pm	v.		Greensboro, NC
**	Sink Tower Erection Company Inc.	DFT:	Lewis & Roberts
	American Interstate Insurance Company		Raleigh, NC

**PLEASE REFER TO “SECTION VI-EXPERT WITNESSES” OF THE “NOTICE TO ALL PARTIES”
INSTRUCTIONS REGARDING THE TESTIMONY OF EXPERT WITNESSES.**

**NOTICE TO ATTORNEYS: A COPY OF THIS CALENDAR IS NOT BEING SENT TO REPRESENTED PARTIES.
IT IS YOUR RESPONSIBILITY TO NOTIFY YOUR CLIENT.**

****PRE-TRIAL ORDER REQUIRED.**

***** THE NOTICES ABOVE APPLY TO ALL CASES SCHEDULED THROUGHOUT THE DESIGNATED WEEK.**

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

**NORTH CAROLINA INDUSTRIAL COMMISSION
HEARING DOCKET**

**DEPUTY COMMISSIONER: CHRYSTAL REDDING STANBACK
COURT REPORTER: GRAHAM ERLACHER**

**WEDNESDAY, AUGUST 30, 2006
GUILFORD COUNTY COURTHOUSE
201 SOUTH EUGENE STREET
3rd FLOOR COURTROOM 3D
GREENSBORO, NORTH CAROLINA**

I. C. FILE NUMBER

173764 10:30am **	Gwendolyn Hamphill (<i>Expedited Hearing</i>) v. City of Greensboro Key Risk Management Services	PLF: Gray Johnson Blackmon Lee & Lawson Greensboro, NC DFT: Smith & Moore Greensboro, NC
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562452 10:30am **	Roderick L. Miles v. Nano-Tex Inc Travelers Property Casualty Co. of America	PLF: Gray Johnson Blackmon Lee & Lawson Greensboro, NC DFT: Orbock Ruark & Dillard Winston-Salem, NC
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567140 11:30am **	Gregory Scott Taylor v. Meredith-Webb Printing Company Key Risk Management Services	PLF: Hedrick Eatman Gardner & Kincheloe Raleigh, NC
--	--	--

217725 11:30am **	Diane K. Ziglar v. Healthsouth Corporation ACE USA	PLF: Scott Law Offices High Point, NC DFT: Hedrick Eatman Gardner & Kincheloe Charlotte, NC
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389965 12:30pm **	Lucian Bean v. K Mart Corporation Sedgwick Claims Management Services	PLF: The Killbride Law Firm Raleigh, NC DFT: Hill Evans Duncan Jordan & Beatty Greensboro, NC
--	--	--

107675 12:30pm **	Cathy Carver v. Alamance County Board of Commissioners Compensation Claims Solutions	PLF: Smith Law Firm Charlotte, NC
--	---	--

**PLEASE REFER TO “SECTION VI-EXPERT WITNESSES” OF THE “NOTICE TO ALL PARTIES”
INSTRUCTIONS REGARDING THE TESTIMONY OF EXPERT WITNESSES.**

**NOTICE TO ATTORNEYS: A COPY OF THIS CALENDAR IS NOT BEING SENT TO REPRESENTED PARTIES.
IT IS YOUR RESPONSIBILITY TO NOTIFY YOUR CLIENT.**

****PRE-TRIAL ORDER REQUIRED.**

***** THE NOTICES ABOVE APPLY TO ALL CASES SCHEDULED THROUGHOUT THE DESIGNATED WEEK.**

APPENDIX F

NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. NO. 392504, ANGELA JONES, Employee, Plaintiff v. SUN MEDICAL SUPPLY/ROTECH HEALTHCARE, Employer, ACE USA, Carrier, Defendants.

OPINION AND AWARD by CHRYSTAL REDDING STANBACK, Deputy Commissioner.

FILED: March 15, 2006

This case was heard before the undersigned in Durham, North Carolina, on August 25, 2004. Thereafter, time was allowed for the taking of depositions of Eugene D. Day, Jr., M.D., S. Mitchell Freedman, M.D., Patrick E. Logue, Ph.D., Sheldon Chase, M.D., Betty Baynes and David Diego. Upon receipt of these deposition transcripts and the parties' briefs and proposed Opinion and Awards, this matter was ready for decision.

A P P E A R A N C E S

Plaintiff: Younce, Vtipil & Bradford, Raleigh, North Carolina; W. Bain Jones, Jr., appearing.

Defendants: Hedrick, Eatman, Gardner & Kincheloe, Raleigh, North Carolina; Jessica C. Smythe, appearing.

* * * * *

The undersigned finds as facts and concludes as matters of law the following which were entered into by the parties in a Pre-Trial Agreement dated August 25, 2004 and at the hearing as:

STIPULATIONS

1. All parties are properly before the Commission, and this is the Court of proper jurisdiction for this action.

2. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

3. The parties were subject to, and bound by, the provisions of the North Carolina Workers' Compensation Act.

4. At all relevant times, an employment relationship existed between the plaintiff and the defendant-employer.

5. ACE USA Insurance Company was the compensation carrier on the risk at the time of plaintiff's compensable injury.

6. Plaintiff's average weekly wage will be determined from a Form 22 submitted by the defendants.

7. Plaintiff's alleged date of injury was October 8, 2003.

8. Plaintiff's medical records, Industrial Commission forms, all discovery and employment documents and a police report were stipulated into evidence as Stipulated Exhibit #1.

9. Additional documents admitted into evidence include:

- Plaintiff's Exhibit #1 – Photocopied photographs of Plaintiff's appearance post-injury

* * * * *

EVIDENTIARY RULINGS

The objections raised in the depositions of Eugene D. Day, Jr., M.D., S. Mitchell Freedman, M.D., Patrick E. Logue, Ph.D., Sheldon Chase, M.D., Betty Baynes and David Diego, are OVERRULED.

* * * * *

Based upon all the competent evidence adduced at the hearing, the undersigned makes the following additional

FINDINGS OF FACT

1. At the time of the hearing, plaintiff was 48 years of age and had a high school education. During most of her adult life, plaintiff has performed clerical, administrative and sales work.

2. Plaintiff, as well as Margaret Zealey, Kathryn Smith, Betty Baynes and other employees had raised concerns with management for defendant-employer concerning the lack of security on the premises of defendant-employer. Individuals were able to enter the back of the building without the knowledge of the employees. The employees were often in circumstances where individuals came from the back of the building to the front of the building without employees realizing individuals were on the premises.

3. The area of Henderson, North Carolina where the defendant-employer's office is located is an area in which there was concern about criminal activity. There were more persons, including homeless persons, loitering and lingering in the area and around the building than in its previous location. In spite of these concerns, defendant-employer did not take any measures to resolve the lack of security on the premises.

4. On October 8, 2003, plaintiff was employed as a customer service representative for defendant-employer. Plaintiff was responsible for taking care of the needs and orders of clients for defendant-employer who was engaged in the provision of medical supplies.

5. On October 8, 2003, plaintiff heard noises in the warehouse and proceeded to determine whether a delivery person or other individuals were in the warehouse. Plaintiff found the warehouse door open and went to pull it down. While she was doing so, plaintiff saw

someone moving behind her and turned and saw a black man wearing a hooded sweatshirt approaching her. Plaintiff inquired as to whether she could assist that individual and realized the person was advancing toward her. Plaintiff reached for cleaning solution in order to try to protect herself. Plaintiff noticed the individual was carrying a part of a piece of equipment in his hand. Plaintiff sprayed the cleaning fluid at this individual and a scuffle ensued. Plaintiff was struck on the head with the piece of equipment and rendered unconscious. Plaintiff sustained a compensable injury by accident arising out of and in the course of her employment with defendant-employer on October 8, 2003.

6. Kathy Smith, another sales representative with defendant-employer, returned from lunch and found telephones ringing unanswered. Ms. Smith proceeded to answer the telephones and then go to the warehouse where she found plaintiff lying unresponsive on the concrete floor. Ms. Smith ran to an adjoining building to call for help.

7. The EMS team arrived and plaintiff regained consciousness. Plaintiff was dazed and resistant to being driven to the hospital by the EMS team. A coworker, Juan Aguilar, drove plaintiff the hospital where she was examined and diagnosed with a concussion.

8. Plaintiff was given pain medication and referred to her primary care physician. Plaintiff was written out of work until she was to see Eugene D. Day, M.D., her primary care physician.

9. Kathy Smith initially indicated in her testimony that she had been at lunch and returned and found plaintiff on the floor in the warehouse. Ms. Smith later indicated in her testimony she recalled the doors were locked by an individual named Jeff. Ms. Smith was inconsistent and contradictory in her testimony in that she admitted she was not in the building at

the time the incident occurred and could not accurately described the condition of the doors during the time she was at lunch.

10. Ms. Smith provided inaccurate information to Officer David Diego, a K-9 handler, who was investigating the warehouse incident after being called by Ms. Smith. Ms. Smith indicated she was in the building the entire time the incident had occurred. This prior out-of-court statement is inconsistent with Ms. Smith's sworn testimony at the hearing and is not afforded any weight.

11. Officer Diego brought his K-9 on the scene to investigate the circumstances. Officer Diego only checked one means of exiting the building – through the back door. Officer Diego's K-9 did not pick up any human scent, leading Officer Diego to believe that no human had come out of the back door of the warehouse for several hours. This is inconsistent with the testimony of Kathryn Smith and plaintiff. Both indicated a number of individuals were coming and going in and out of the building and through the warehouse doors during the work day. Officer Diego did not check any other areas other than the warehouse door as a way in which the individual who injured plaintiff had exited. Additionally, Officer Diego could not locate the notes related to the investigation that were provided by his supervisor who was also with him. The undersigned finds that the results of Officer Diego's investigation of this incident does not weigh negatively upon, nor does it reduce plaintiff's credibility regarding her account of the incident that took place on October 8, 2003.

12. Betty Baynes, a former marketer for defendant-employer, had also served as an interim manager for defendant-employer. Ms. Baynes had contacted Kathy Smith on the day of the accident and was informed plaintiff had been injured. Ms. Baynes indicated Ms. Smith was not capable of handling these circumstances and was previously suspected of hiding paperwork

of the defendant-employer. Ms. Baynes indicated Ms. Smith was untrustworthy and unreliable and had been considered for termination by the management of Sun Medical prior to this incident. Ms. Baynes indicated Ms. Smith was the primary individual who was attempting to spread inaccurate information about plaintiff and this incident.

13. Dr. Day examined plaintiff and determine she had a concussion, injury to her back and problems with headaches and dizziness. Dr. Day proceeded with conservative treatment of physical therapy and medication. This course of treatment was unsuccessful and plaintiff began to develop significant problems with flashbacks, anxiety and other symptoms of post traumatic stress disorder. Plaintiff also experienced symptoms of neck pain.

14. Dr. Day referred plaintiff to Michael Avant, a counselor whose primary treatment experience was for alcohol and substance abuse. This therapy was unsuccessful for plaintiff.

15. Margaret Zealey, former manager for defendant-employer, became manager for defendant-employer after plaintiff's injury by accident. Ms. Zealey had been informed of plaintiff's injury by accident, but she was not aware of any paperwork that had been filed in regards to plaintiff's injury.

16. Plaintiff inquired of Kathy Hood, the human resource representative for defendant-employer, as to the status of her claim. Plaintiff also inquired of Tim Pigg, regional manager for defendant-employer, concerning her claim. Neither individual was able to provided specific information relating to her claim but indicated they would follow up with plaintiff. When no follow up occurred, plaintiff contacted the corporate offices to inquire about her claim.

17. The corporate office informed plaintiff they did not know who plaintiff was. Plaintiff then contacted the North Carolina Industrial Commission and faxed information concerning the accident report.

18. Plaintiff continued to complain to Dr. Day that her psychological problems were worsening. Plaintiff requested to be able to see a specialist concerning her head injury and the resulting flashbacks, dizziness, blackouts and other symptoms she experienced as a result of the injury by accident.

19. No one from defendant-employer fully interviewed plaintiff in regards to what had transpired at the time of the accident; however, plaintiff or her son, Scott, provided documentation to defendant-employer concerning plaintiff's health status each time the doctor provided that information.

20. At the direction of Dr. Day, plaintiff was out of work for several periods of time as a result of her injuries sustained as a result of the injury by accident of October 8, 2003, which included, but may not be limited to the following: October 10, 2003 through November 10, 2003 when plaintiff was released to return to work part-time; part-time work from November 10, 2003 through December 3, 2003 when plaintiff was released to return to work full-time; December 8, 2003 through January 9, 2004 when plaintiff was released to return to work full-time with a twenty-pound lifting restriction; February 3, 2004 through February 16, 2004.

21. Plaintiff attempted to return to work, and Margaret Zealey indicated plaintiff could perform her customer service work without having to go into the warehouse. Due to her injuries, plaintiff had great difficulty being able to perform her work and was doing so at a much slower pace and having difficulty concentrating after her injury by accident of October 8, 2003.

22. Plaintiff was experiencing such difficulties that she relayed to Dr. Day that she was incapable of working at that time. Part of plaintiff's difficulty in working at the defendant-employer's warehouse was attributable to accounts that the man who had allegedly assaulted

plaintiff continued to be seen around the area. Plaintiff also had to go to the emergency room on several occasions relating to the blackouts and dizziness she was experiencing.

23. Dr. Day referred plaintiff to S. Mitchell, Freedman, M.D., a neurologist, in February 2004. Dr. Freedman examined plaintiff on February 2, 2004 and took a history concerning how the accident had occurred. Dr. Freedman was extremely concerned plaintiff had not be able to receive appropriate treatment for her closed head injury. Dr. Freedman contacted plaintiff's counsel, defendant-carrier's claims representative and defense counsel stating his great concerns about plaintiff's treatment. Dr. Freedman indicated that the carrier basically told him to "take a hike," and that the case was being denied. Dr. Freedman diagnosed plaintiff with a concussion and depression and anxiety resulting from the closed head injury plaintiff sustained as a result of the injury by accident of October 8, 2003.

24. Dr. Freedman requested a neuropsychological evaluation to determine the extent of plaintiff's closed head injury. Dr. Freedman wrote plaintiff out of work for a three-month period, as plaintiff was not capable of working during that time period due to her closed head injury.

25. Dr. Freedman believed it was appropriate to initially treat plaintiff's depression and anxiety and then turn to neurological problems as a secondary matter. By the March, 2004 visit with plaintiff, Dr. Freedman was very concerned for plaintiff's psychiatric health, as she was suicidal and in a dangerous situation. The delay in the defendant-employer's and defendant carrier's investigation and handling of plaintiff's workers' compensation claim and continued unreasonable denial of her claim and denial of appropriate, timely medical care significantly contributed to deterioration of plaintiff's condition and her resulting continued inability to earn wages. Dr. Freedman did not receive authorization from defendant-carrier to provide the

medical care that plaintiff needed, so he worked through plaintiff's private insurance resources and referred plaintiff to Sheldon Chase, M.D., a psychiatrist.

26. Plaintiff had an initial visit with Dr. Chase on March 23, 2004. Dr. Chase examined plaintiff and determined she suffered from post traumatic stress disorder as a result of her injury by accident on October 8, 2003. Dr. Chase prescribed antidepressant medication, individual counseling, and he wrote plaintiff out of work as a result of her post traumatic stress disorder. Plaintiff remains out of work to date as a result of her injury by accident, at the direction of Dr. Chase.

27. Dr. Logue examined plaintiff and gave her diagnostic testing at the direction of Dr. Freedman. Plaintiff was experiencing blackouts, recurrent headaches, anxiousness, depression and other self-destructive behavior as a result of the injury by accident on October 8, 2003. Dr. Logue's testing indicated plaintiff was being truthful and was not malingering.

28. Dr. Logue's testing also indicated plaintiff had a mild concussion as a result of the injury by accident and also suffered from post traumatic stress disorder. Plaintiff was in the critical range indicated by the testing performed by Dr. Logue.

29. Dr. Logue, Dr. Freedman and Dr. Chase indicated it is not uncommon for individuals who have experienced this type of accident to have difficulty being able to remember with specific detail how the accident occurred. Accordingly, the differing accounts that plaintiff has offered regarding the details of the incident of October 8, 2003 do not reduce her credibility with regards to the incident having occurred, but rather is a characteristic of the type of symptoms exhibited by a patient suffering from post traumatic stress syndrome.

30. Dr. Logue and Dr. Chase indicated, and the undersigned finds, that plaintiff's difficulties in proceeding with her workers' compensation claim, her inability to perform her

work as she had done prior to the accident and the stressful circumstances within her employment also contributed to plaintiff's post traumatic stress disorder.

31. Dr. Logue, Dr. Chase and Dr. Freedman have indicated that based upon their evaluation and examination of plaintiff, they believe plaintiff was truthful in regards to the incident that occurred on October 8, 2003.

32. Dr. Logue, Dr. Chase and Dr. Freedman have also determined, and the undersigned finds, that plaintiff's mild closed head injury and the resulting post traumatic stress disorder were a direct result of plaintiff's injury by accident on October 8, 2003.

33. According to Margaret Zealey and Betty Baynes, the defendant-employer had limited knowledge relating to workers' compensation claims. There was very little training provided by defendant-employer and to their knowledge, there was no investigation in regards to plaintiff's injury by accident by defendant-employer prior to the time of plaintiff's workers' compensation claim.

34. The out of work slips for plaintiff were kept in her personnel file and were not transferred to corporate office or any other individual concerning plaintiff's circumstances in relation to the injuries she sustained as a result of the October 8, 2003 injury by accident. Defendant-employer's failure to properly process plaintiff's claim negatively impacted plaintiff's circumstances resulting from the October 8, 2003 injury by accident, including contributing to her ongoing inability to earn wages.

35. When Dr. Freedman wrote plaintiff out of work for the first three months, plaintiff was contacted by Kathy Hood and Mr. Pigg, the regional executive. They indicated to plaintiff that she would be terminated because of out of work time. This was a wrongful termination based upon plaintiff's injury by accident. Plaintiff was never given the opportunity

to be placed on any type of medical leave status.³⁸ Plaintiff remains disabled as a result of her injury by accident on October 8, 2003 and resulting post traumatic stress disorder, and it is necessary for her to continue to receive medical treatment for the injuries she sustained as a result thereof.

36. No Form 22 was submitted by the defendants in order to determine plaintiff's average weekly wage, and therefore the maximum compensation rate for 2003, \$674.00, is found to be plaintiff's compensation rate for purposes of this Opinion and Award.

* * * * *

The foregoing findings of fact and conclusions of law engender the following additional

CONCLUSIONS OF LAW

1. Plaintiff sustained a compensable injury by accident arising out of and in the course of her employment with defendant-employer on October 8, 2003. N.C. Gen. Stat. §97-2(6).

2. As a result of plaintiff's injury by accident on October 8, 2003, plaintiff developed post traumatic stress disorder. *Heatherly v. Montgomery Components, Inc.*, 71 N.C.App. 377, 379, 323 S.E.2d 29 (1984); *Petty v. Transport, Inc.*, 276 N.C. 417, 173 S.E.2d 321 (1970).

3. Plaintiff is entitled to receive medical treatment from defendants as a result of her injury by accident of October 8, 2003 and resulting post traumatic stress disorder. This treatment may include treatment by Eugene D. Day, M.D., Michael Avant, S. Mitchell Freedman, M.D., Patrick E. Logue, Ph.D., Sheldon Chase, M.D., as well as other medical treatment necessary effect a cure, provide relief and/or lessen plaintiff's period of disability. N.C. Gen. Stat. §97-25.

4. Plaintiff was wrongfully terminated from her employment as a result of filing a workers' compensation claim and the resulting medical care and inability to earn wages as a result of her injury by accident of October 8, 2003. N.C. Gen. Stat. §97-32.

5. Defendant-employer has not complied with requirements of the North Carolina Workers' Compensation Act and the Rules of the North Carolina Industrial Commission with regards to plaintiff's workers' compensation claim. Defendant-Employer's delay in filing the claim, its unwillingness to provide work within plaintiff's restrictions and to honor out of work medical information provided by her treating physicians was unjustified and unreasonable. N.C. Gen. Stat. §97-88.1; North Carolina Industrial Commission Rule 802.

6. Defendants failed to use due diligence to investigate this claim prior to denial of the same. N.C. Gen. Stat. §58-53-15.

7. Defendants are not entitled to an independent medical evaluation in this denied claim. N.C. Gen. Stat. §97-25.

8. Plaintiff is entitled to the payment of compensation at the rate of \$674.00 per week. N.C. Gen. Stat. §97-2(5).

* * * * *

Based upon the foregoing findings of fact and conclusions of law, the undersigned enters the following

A W A R D

1. Plaintiff is entitled to temporary total disability compensation for all periods she was written out of work by Dr. Eugene Day, Dr. S. Mitchell Freedman and Dr. Sheldon Chase as described herein, at the rate of \$674.00 per week. Plaintiff remains disabled to date and shall continue to receive temporary total disability compensation at the rate of \$674.00 per week until

further Order of the Industrial Commission. Said compensation that has accrued to date shall be paid in one lump sum, and continuing thereafter, subject to an attorney's fee approved herein.

2. Defendants shall provide medical treatment necessitated as a result of her injury by accident of October 8, 2003 and resulting post traumatic stress disorder. This includes treatment by Dr. Eugene Day, Michael Avant, Dr. S. Mitchell Freedman and Dr. Sheldon Chase, the cost of which shall be borne by defendants. Defendants shall continue to provide medical treatment for so long as the same is necessary to effect a cure, provide relief and/or lessen plaintiff's period of disability.

3. As a result of defendants' failure to fully investigate this claim prior to denial, failure to comply with the North Carolina Workers' Compensation Act as well as the Rules of the North Carolina Industrial Commission, the defendants are subject to sanctions and penalties. Defendants shall pay attorney's fees in the amount of twenty-five percent (25%) of the lump sum compensation due plaintiff pursuant to Paragraph 1 of this AWARD. These attorney's fees shall be paid in addition to the compensation owed to plaintiff and shall not be deducted from that compensation. In regards to future compensation owed to plaintiff pursuant to Paragraph 1 of this AWARD, reasonable attorney's fees in the amount of twenty-five percent (25%) of the sums due plaintiff, are approved and shall be paid as follows: defendants shall forward to plaintiff's counsel every fourth check due the plaintiff after the lump sum compensation has been paid.

4. Defendants shall pay the costs.

IT IS FURTHER ORDERED that this case is hereby REMOVED from the Durham hearing docket.

S/

CHRYSTAL REDDING STANBACK
DEPUTY COMMISSIONER